IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 65 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHEMCHANDBHAI VARMA

Versus

KACHARABHAI G VAGHELA

Appearance:

MR NITIN M AMIN for Petitioner

MR PK JANI for Respondent No. 1

MR SJ DAVE, APP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

Present petitioner, who is Secretary of Amrut Kunj Co.Operative Housing Society, Kalol, Dist. Mehsana, has filed the present Criminal Revision Application

against the respondents-original accused Nos.1 and 2 against whom one Visabhai Valajibhai Vaghela had filed one criminal complaint directly into the Court of learned Judicial Magistrate First Class at Kalol on 16-9-1991 under Secs.409, 420, 467, 468 read with Sec.34 of Indian Penal Code. The complaint has been filed on the allegation that large amount has been misappropriated by the respondent Nos.1 and 2. After recording verification, learned Judicial Magistrate First Class, Kalol passed an order on 17-12-1991 directing the Kalol City Police Station to investigate the matter under Sec.156(3) of Cr.P.C. and to submit the report within stipulated time. On receiving the same, Police started investigation and at the end of it, submitted `C' summary report in the Court of learned Judicial Magistrate First Class, Kalol and in pursuance of that, he issued notice to the complainant. After receiving the same, complainant submitted a purshis at Ex.4 requesting the Court that since the matter is settled between the parties, i.e. between the complainant and respondent-original accused Nos.1 and 2, `C' summary report may be accepted. Taking on record the above purshis Ex.4, Court accepted the `C' summary report submitted by the Investigating Officer and discharged the accused even without giving any opportunity to the Society who is affected party in this case. Against that order, Secretary of the Society filed present Criminal Revision Application praying to set aside the order passed by the learned Judicial Magistrate First Class on the basis of concession given by the complainant.

2. I have heard learned counsel for the petitioner, Mr.N.M.Amin, learned counsel for the respondent No.1, Mr.P.K.Jani and learned APP for the State, Mr.S.J.Dave.

3. Only point which has arisen and argued before this Court is whether the Court can accept the `C' summary report only on the basis of concession given by the complainant in a non-compoundable offence or not. Learned counsel for the respective parties have agreed that the Court cannot decide the matter only on the concession given by the complainant in a non-compoundable matter and ought to have decided the `C' summary report on merits. So, the order passed by the court below is required to be quashed and set aside only on that ground and matter is required to be remanded back to the Court below with a direction that he should decide the `C' summary report on merits without being influenced by the concession purshis Ex.4 filed by the original complainant.

4. Hence, this Criminal Revision Application is allowed. Order dated 17-12-1991 passed by the learned Judicial Magistrate First Class, Kalol in M.Case No.220 of 1991 is hereby quashed and matter is remanded back to the court below to decide the`C' summary report on merits not being influenced by the concession purshis Ex.4. Rule is made absolute accordingly to the aforesaid extent.

(R.P.DHOLAKIA,J.)
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